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NOVARTIS VACCINES AND DIAGNOSTICS INC.
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In re Application of :
COSTANTINO, et al. :
Application No.: 10/574,437 : DECISION ON PETITIONS
PCT No.: PCT/IB2004/003366 :
Int. Filing Date: 04 October 2004 : UNDER 37 CFR 1.137(b)
Priority Date: 02 October 2003 :
Attorney Docket No.: PP021389.0013 : AND 37 CFR 1.497(d)
For: HYPO- AND HYPER-ACETYLATED :
MENINGOCOCCAL CAPSULAR :
SACCHARIDES :

This decision is in response to applicant's filing of 29 September 2009 in the United States Patent and Trademark Office (USPTO) comprising a petition under 37 CFR 1.497(d) to add Francesco Berti as an inventor in the application and a petition under 37 CFR 1.137(b) to revive the application.

BACKGROUND

On 15 September 2009, applicant was mailed a decision dismissing applicant's petition under 37 CFR 1.181. Applicant was afforded two months to file any additional petitions.

On 29 September 2009, applicant filed the petitions discussed herein.

DISCUSSION

I. Petition Under 37 CFR 1.497(d)

A request under 37 CFR 1.497(d) [formally, 37 CFR 1.48] to correct an error in naming inventorship requires:

- (1) a petition including a statement from each person being added or deleted as an inventor that the error in inventorship occurred without any deceptive intention on his or her part;
- (2) an oath or declaration by the actual inventor(s) as required by 37 CFR 1.63;
- (3) the fee set forth in 37 CFR 1.17(h); and

- (4) if an assignment has been executed by any of the original named inventors, the written consent of the assignee in compliance with 37 CFR 3.73(b).

As to Item (1), applicant has provided a statement from Francesco Berti declaring that the error in inventorship occurred without deceptive intent.

Regarding Item (2), on 25 April 2007, applicant filed a declaration executed by the proper co-inventors.

As Item (3), payment of the \$130.00 petition fee will be charged to deposit account 03-1664 as authorized.

Regarding Item (4), applicant has provided a statement from the assignee consenting to the addition of Francesco Berti as an inventor in the present application.

As such, applicant has satisfied all four items detailed above and it is proper to grant applicant's petition at this time.

II. Petition Under 37 CFR 1.137(b)

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required). Item 4 does not apply to the present application.

As to item 1, applicant has now provided a grantable petition under 37 CFR 1.497(d) to add Francesco Berti as an inventor, thus perfecting the declaration filed 25 April 2007.

Regarding item 2, applicant has provided payment of the appropriate petition fee.

As to item 3, applicant's statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" and the prompt filing of the petition satisfies the requirement of 37 CFR 1.137(b)(3).

With the filing of the grantable petition, the proper reply to the Form PCT/DO/EO/916 mailed 27 August 2007 has been provided and it is proper to grant applicant's petition at this time.

CONCLUSION

For the reasons discussed above, the request under 37 CFR 1.497(d) and petition under 37 CFR 1.137(b) are **GRANTED**.

This application has an international application filing date of 04 October 2004 and will be given a date of **25 April 2007** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

The application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision



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